IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11504 of 2004

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JUNAGADH JILLA MAZDOOR SANGH & 1 - Petitioner(s)

Versus

GUJARAT AGRICULTURAL UNIVERSITY & 1 - Respondent(s)

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Appearance :

MR TR MISHRA for Petitioner No(s).: 1,2.

MR DG CHAUHAN for Respondent No(s).: 1.

NOTICE SERVED for Respondent No(s).: 2.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 19/07/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India, the petitioners have prayed for an appropriate writ, direction or order directing the respondents to immediately comply with

the orders passed by this Court in Special Civil Application No.6385 of 2001 dated 12th January 2004. It is also further prayed to direct the respondents to grant the benefit of permanency/regularization and pay the arrears with 12% interest thereon.

2. It is the case of the petitioners that the present dispute is with regard to six employees, namely (1) Shardaben Shivabhai, (2) Labhubhai Becharbhai Rathod, (3) Maganbhai Ramjibhai Rathod, (4) Harun Moti Raja, (5) Dodiya Bhagwanji Gordhanbhai, and (6) Ashok Tulsidad Kotak, who are working with respondent No.1 Gujarat Agricultural University since more than 10 years. It is the case of the petitioners that as per the scheme framed by the respondent No.1 Gujarat Agricultural University which came to be sanctioned by the Hon'ble Supreme Court in the decision reported in the case of Gujarat Agricultural University Vs. Rathod Labhu Bechar & Ors., reported in AIR 2001 S.C. 706 by which it has been decided to regularize those daily-rated workers who have completed 10 years or more continuous service with minimum of 240 days in each calendar year as on 31.12.1999 as regular employees. It is the case of the petitioners that though all the concerned workmen had completed 240 days in 10 preceding years their services are not regularized and therefore the petitioners had preferred Special Civil Application No. 6385 of 2001 before this Court and the learned Single Judge of this Court vide order dated 12th

January 2004 disposed of the said Special Civil Application by issuing following directions:

> “(i) The petitioners shall make a detailed representation, regarding the four employees who are not made permanent, to the respondent No.4, Government Labour Officer, within a period of two weeks from today.
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> (ii) The respondent No.4, Government Labour Officer shall immediately thereafter call for the records from the University and shall examine the record of the University as well as any documents which may be produced by the petitioners, and after hearing both the sides, viz., the petitioners Union as well as the representative of the University, shall take appropriate decision as to whether the workman concerned has or have completed 240 days in 10 preceding years in accordance with law or not.
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> (iii) If a decision is rendered by the Government Labour Officer that concerned workman has completed 240 days, the respondent university shall extend the benefit pursuant to the judgment of the Apex Court in case of Gujarat Agricultural University [supra].”

It is the case of the petitioners that thereafter the case of each concerned workman has been considered by the Government Labour Officer, Junagadh, and a statement is also produced which is at Annexure 'B' to the present compilation. On going through the said statement it appears that none of the concerned workmen had completed 240 days in last 10 years. It

is the case of the petitioners that if Saturdays, Sundays and other Public Holidays are included then all the concerned workmen have completed 240 days in 10 preceding years. It appears from the record that as it is found by the respondent No.1 on the basis of the report and the decision of the Government Labour Officer that none of the concerned workmen has completed 240 days in 10 preceding years they are not entitled to the benefit pursuant to the judgment and order passed by the Hon'ble Supreme Court in the case of ***Gujarat Agricultural University (supra)*** and therefore the petitioners have preferred the present Special Civil Application for the aforesaid reliefs.

3. Shri T.R. Mishra, learned advocate appearing on behalf of the petitioners and the concerned workmen has vehemently submitted that if Saturdays, Sundays and Public Holidays are included in that case all the concerned workmen have completed 240 days in preceding 10 years and therefore they are entitled to the benefit of the judgment and order passed by the Hon'ble Supreme Court; their services are required to be regularised; and they are required to be extended the benefits available to the permanent employees. Shri Mishra has relied upon one judgment of the Hon'ble Supreme Court in which it is held that while considering the question of completion of 240 days in the last preceding year while considering breach of Section 25-F of the I.D. Act, Saturdays, Sundays and Public Holidays are required to be included and

therefore it is submitted that while extending the benefit of regularization and permanency as per the judgment of the Hon'ble Supreme Court in the case of *Gujarat Agricultural University* (supra), Saturdays, Sundays and Public Holidays are required to be included while considering minimum working days of 240 days in each calendar year. It is therefore requested to allow the present Special Civil Application.

4. In response to the notice issued by this Court, Shri DG Chauhan, learned advocate appears on behalf of respondents No. 1 and 2. An affidavit-in-reply is filed on behalf of respondent No.1. It is submitted that none of the concerned workmen is entitled to benefit of permanency/regularization as they have not fulfilled the terms and conditions and the criteria laid down under the scheme of regularization of daily-rated labourers reported in the case of ***Gujarat Agricultural University (supra)***. It is also further submitted that none of the concerned workmen has completed 10 years continuous service with a minimum of 240 days in each calendar year and therefore they are not covered under the scheme of regularization. It is further submitted that if the contention on behalf of the petitioners to include Saturdays, Sundays and Public Holidays while calculating and considering minimum 240 days is accepted in that case the same will be adding something which is not there and approved by the

Hon'ble Supreme Court in the aforesaid decision and therefore it is requested to dismiss the present Special Civil Application. It is further submitted that it was a case of approximately 5100 daily-rated employees and as and when the workmen complete 10 years continuous service with minimum of 240 days in each calendar year they are made permanent and given the benefit of permanency and their services have been regularised and while considering the minimum of 240 days in all other cases Saturdays, Sundays and Public Holidays are not included and/or counted. It is further submitted that once the scheme is sanctioned by the Hon'ble Supreme Court with some modification and there is no reference to counting/considering Saturdays, Sundays and Public Holidays while considering minimum working days of 240 in each calendar year, according to the respondents, this Court has no jurisdiction and the petitioners cannot pray to add something which is not so provided by the Hon'ble Supreme Court while sanctioning/modifying the scheme with regard to regularization. It is therefore requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties. There were 5100 daily-rated workmen working with respondent No.1 Gujarat

Agricultural University. There was a dispute with regard to making those employees permanent from the date on which they completed 240 days of service. The dispute was raised before the Industrial Tribunal, Rajkot and the Industrial Tribunal directed the respondent No.1 Gujarat Agricultural University to regularise the services of all such daily-rated labourers who have completed 10 years of service (with minimum if 240 days) as on 1.1.1993 with pay and all allowances along with other benefits given to permanent Class-IV employees. Being aggrieved and dissatisfied with the judgment and award passed by the Industrial Tribunal, Rajkot, the respondent No.1 preferred Special Civil Application before this Court, and the learned Single Judge partly allowed the writ petition and set aside the award with a direction to the respondent No.1 to make payment to the workman at the minimum of the pay-scale and also to frame a scheme for regularization of such daily-rated labourers. It appears from the record that feeling aggrieved by the judgment of the learned Single Judge, the respondent No.1 preferred Letters Patent Appeal which came to be dismissed. Thereafter, the respondent No.1 approached the Hon'ble Supreme Court by way of Special Leave Petition (C) No. 1490/1999 and other Special Leave Petitions. It appears from the record that during the pendency of the aforesaid Special Leave Petitions, instead of contesting various issues a

scheme came to be framed by the University for absorption of those employees with approval of the State Government and details of the proposed scheme are as under:

> **“Scheme for regularization of daily rated labours of the Gujarat Agricultural University.**
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> 1. Daily-wager workers, whether skilled, semi-skilled or unskilled, who have completed 10 years or more of continuous service with a minimum of 240 days in each calendar year as on 31.12.1999, shall be regularised as regular employees with effect from 1.1.2000 and shall be put in the time scale of pay applicable to the corresponding lowest grade in the University subject to the following terms and conditions :
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> (a) The daily rated employees shall be eligible and must possess the prescribed qualifications for the post at the time of their appointment on daily rated basis.
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> (b) Daily-wager employees shall be regularised in a phased manner to the extent or available regular sanctioned posts/vacancies on the date of regularization and on the basis of seniority-cum-suitability including physical fitness.
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> [c] The work and conduct of such employees should have been of overall

good category and satisfactory and no disciplinary proceedings are pending against them.

2. Daily workers, whether skilled, semi-skilled or unskilled, who have completed 10 years of continuous service with a minimum of 240 days in each calendar year as on 31.12.1999 but could not be regularised shall be treated as monthly rated employees w.e.f. 1.1.2000 in the fixed pay without allowances as per the following formula prepared by University :

Fixed pay – Daily rate 26+Rs.500. Prescribed by the Government from time to time for skilled, semi-skilled, unskilled workers as the case may be

They would be entitled to an annual increment of Rs. 15/-, Rs. 20/- and Rs. 25/- respectively for unskilled, semi-skilled and skilled workers till their services are regularised as per para-1.

3. Daily-wager whether skilled, semi-skilled or unskilled who have not completed 10 years of service with a minimum of 240 days in each calendar year shall be paid daily wage at the rates prescribed by the Government of Gujarat from time to time for daily wager employees falling in Class III and Class IV.

4. The seniority of daily rated Class-III and IV employees so regularised vis-a-vis Class III and IV employees appointed on regular basis shall be determined w.e.f. 1,1,2000. The *inter se* seniority of such daily rate Class III & IV employees shall

> be determined in accordance with the date of joining the post on daily rated basis. If the date of joining the post(s), on daily rated basis by such daily rated employees was the same, then the elder employee shall rank senior to an employee younger in age. If the date of joining of the directly recruited regular employees and the date of regularised employees as per this scheme is the same, the direct recruit shall be senior."

There were some objections raised by the Union with regard to certain conditions and the eligibility criteria, and the Hon'ble Supreme Court, while approving the scheme, modified some of the conditions. However, the proposed cut-off date was not approved and the Hon'ble Supreme Court issued the direction while approving the scheme that all such qualified workers should be regularised from the day they completed 10 years of continuous service with minimum of 240 days in each calendar year. The Judgment of the Hon'ble Supreme Court, while approving/modifying the scheme to regularise the daily-rated workers working with respondent No.1 is as referred hereinabove in the case of *Gujarat Agricultural University (supra).* Therefore, as per the direction of the Hon'ble Supreme court and the scheme approved and sanctioned by the Hon'ble Supreme Court, the main eligibility criteria for getting the benefit of regularization/permanency is completing 10 years service with minimum 240 days in each calendar

year. Now, it is required to be noted that there is no reference to inclusion and/or counting of Saturdays, Sundays and the Public Holidays while considering 240 days' service in each such calendar year. Therefore, what is not there, in the order passed by the Hon'ble Supreme Court while sanctioning/modifying the scheme, cannot be permitted to be added by this Court. If the contention on behalf of the petitioners to include/count Saturdays, Sundays and Public Holidays while calculating minimum of 240 days in each calendar year is accepted, in that case it will be adding certain further conditions which are not there in the scheme approved/modified by the Hon'ble Supreme Court in the aforesaid decision. Therefore, this Court in a petition under Article 226 of the Constitution of India cannot grant such a prayer. It is also required to be noted that there were 5100 such daily-rated employees and all throughout till date the respondents have regularised the services of those daily-rated workmen employees who have worked for 10 years with minimum of 240 days in each calendar year excluding Saturdays, Sundays and other Public Holidays. Thus, there is no discriminatory treatment given by the respondent No.1. It is not the case of the petitioners in the present Special Civil Application and/or it is not pointed out that in other cases the respondent University has granted the benefit of regularization/permanency to other daily-

rated employees including Saturdays, Sundays and other public holidays while counting minimum of 240 days. Considering the judgment of the Hon'ble Supreme Court and the directions issued therein while sanctioning/modifying the scheme of the respondent No.1 University with regard to regularization of daily-rated employees, this Court cannot add anything what is not provided in the direction/scheme approved by the Hon'ble Supreme Court. If the petitioners have any grievance, then it is for the petitioners either to approach the Hon'ble Supreme Court for a clarification and/or modification and the remedy is elsewhere. However, as stated hereinabove, this Court, in a petition under Article 226 of the Constitution of India, cannot add what is not there in the scheme sanctioned by the Hon'ble Supreme Court and for which there is no direction issued by the Hon'ble Supreme Court. Under the circumstances, no relief can be granted to the petitioners in the present proceedings. Hence, the present Special Civil Application is required to be dismissed and is accordingly dismissed. Notice is discharged.

[M.R. Shah, J.]

RMR.